



US Army Corps
of Engineers.

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street

San Francisco, CA 94105-2197

NUMBER: 23205S

DATE: May 11, 1998

RESPONSE REQUIRED BY: June 11, 1998

PROJECT MANAGER: Philip Shannin TELEPHONE: (415) 977-8445 Email: pshannin@smtp.spd.usace.army.mil

1. Introduction: Baccarat Fremont Developers LLC (through their agent Dr. Michael Josselyn, Wetlands Research Associates, Inc., 2169 East Francisco Boulevard, Suite G, San Rafael, California, 94901, phone 415-454-8868) has applied for a Department of the Army permit to deposit fill in 2.36 acres of wetlands, in the city of Fremont, Alameda County, California, for the construction of an office building facility. This application is being processed pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403), and Section 404 of the Clean Water Act (33 U.S. Code 1344). An Environmental Impact Report (EIR) is being prepared by the City of Fremont, in conjunction with their California Environmental Quality Act (CEQA) evaluation.

2. Project Description: As shown in the attached drawings, the applicant plans to fill 2.36 acres of wetlands with 3800 cubic yards of clean fill material. The purpose of this work is to construct and maintain a campus style office complex, which includes buildings, parking facilities and landscaping. The project plans include the expansion of the existing wetlands in the southwest corner of the parcel for on-site mitigation. This site is bounded to the north by Cushing Parkway, the east by Fremont Boulevard, and to the west and south by Alameda County Flood Control District flood channels.

3. State Approvals: The applicant states that he has notified the Regional Water Quality Control Board, San Francisco Bay Region, to determine the need for State water quality certification. If the State Water Resources Control Board determines that this project is consistent with the California Water Quality Control Plan requirements adopted by the Regional

Board and Sections 301, 302, 303, 306 and 307 of the Clean Water Act, the State will issue a Certificate of Conformance with Water Quality Standards to the project proponent. No Corps permit will be granted until the applicant obtains the required certification or waiver.

Those parties concerned with any water quality problems that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 2101 Webster Street, Suite 500, Oakland, California 94612.

In addition, the proposed project appears to be in the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC). A permit application has been submitted to BCDC for the proposed project.

4. Environmental Assessment: Corps of Engineers has assessed the environmental impacts of the action proposed, in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), and pursuant to Council on Environmental Quality's Regulations, 40 CFR 1500-1508, and Corps of Engineers' Regulations, 33 CFR 230 and 325, Appendix B. Unless otherwise stated, the Preliminary Environmental Assessment describes only the impacts (direct, indirect, and cumulative) resulting from activities within the jurisdiction of the Corps of Engineers. The supporting data used in the preparation of this Preliminary Environmental Assessment is on file in the South Section, Regulatory Branch, Corps of Engineers, 333 Market Street, San Francisco, California.

The Preliminary Environmental Assessment resulted in the following findings:

a. IMPACTS ON THE AQUATIC ECOSYSTEM

(1) Physical/Chemical Characteristics and Anticipated Changes

Circulation - The wetlands in the northwest portion of the site have a partial connection to a tidal flood control channel through three leaking flap gates. The proposed project includes filling this tidal wetlands. However, since a new flap gate will be constructed to allow tidal water to enter the mitigation site, no long-term impacts to circulation are expected.

Water Quality - Negative impacts to water quality are expected to be minor and short-term. Excavation on the project site and in the mitigation area will occur during the dry season to prevent the significant adverse impacts caused by discharges. Erosion and sediment control devices will be implemented during construction to minimize the amount of sediment entering the culverts, which lead to the flood control channel. Berms surrounding the mitigation area will prevent pollutants in stormwater runoff from entering the mitigation wetlands, off of roads and the proposed parking lot. No long-term impacts to water quality are expected.

(2) Biological Characteristics and Anticipated Changes

Wetlands (Special Aquatic Site) - Construction of the project would result in the filling of 2.36 acres of wetlands, of which 0.48 acre is brackish wetlands and 1.88 acres are seasonal freshwater wetlands (with some degree of tidal flow in the wetlands in the southwest corner of the property). The freshwater areas are dominated by salt grass (*Distichlis spicata*), alkali heath (*Frankenia salina*), saltbush (*Atriplex patula*), alkali weed (*Cressa truxillensis*) and creeping wild-rye (*leymus triticoides*). Vegetation in the brackish wetlands are dominated by the same species as in the seasonal wetlands, with the addition

of creeping spikerush (*Eleocharis macrostachya*) and alkali bulrush (*Scirpus robustus*).

The proposed mitigation will take place in the southwest corner of the property at a ratio of 1:1 acreage replacement. Mitigation will consist of creating 2.36 acres of seasonal freshwater wetland habitat and converting an adjoining 5.3 acres of seasonal freshwater wetland habitat to brackish wetlands.

The converted wetlands are expected to remain wet for a longer period of the year, after the culverts leading to the flood control channel are opened. As a result of the increase in water flow, the mitigation area is expected to retain higher invertebrate numbers than the wetlands currently present. Bird populations, which consume invertebrates as a food source, may increase as a result.

The berms, currently existing along the southern and western edges of the mitigation area, separate the area from the flood control channel. These berms will be reinforced. Two additional 25 foot wide berms, consisting of compacted soil, will be constructed in the mitigation area. One berm will be placed between the preserved wetland area and the newly created mitigation wetland. The other berm will be constructed along the northern and eastern edges of the mitigation area, acting as a buffer between the developed property and the mitigation area.

The freshwater wetlands in the mitigation area, proposed for conversion to brackish wetlands, currently receive some water from the flood control channel at very high tides. However, the extent to which this water enters the area is unclear. During mitigation, the flow of water from the flood control channel into this wetland will be increased, leading to a conversion from a seasonal freshwater wetland to a tidal brackish wetland. Two currently closed culverts will be opened along the western edge of the mitigation area and flap gates installed. One flap gate will allow tidal flow from the channel to enter the preserved wetland area. The other will allow flow

from the wetland to the channel. Two 600 to 700 feet long and one foot deep tidal sloughs will be excavated in the preserved wetland area, to convey the saline waters throughout the wetland.

The created wetland area will be seeded with native wetland plant species, obtained from a commercial source. No transplantation of nursery grown stock is planned, unless the created wetland area does not meet performance criteria. The upland berm, buffering the mitigation area, will be planted with coyote bush and toyon plants and seeded with native upland grasses.

Wetland functions and values are expected to diminish in the short-term but increase in the long term, due to the creation of wetland habitat on site with a larger contiguous area and a higher tidal water flow than the wetlands currently present. A contiguous wetland is expected to maintain a higher ecological integrity than the current dispersed wetlands on the property and reduce the edge effects of the surrounding development on the wetland habitat.

Endangered Species - No impacts to any federally listed endangered species have been indicated at this time. The habitat on the project site is unlikely to support any federal or state protected fish or wildlife species, except, possibly, vernal pool tadpole shrimp. Some marginal potential habitat exists for tadpole shrimp on the parcel and, therefore, surveys are being conducted in accordance with U.S. Fish and Wildlife Service regulations to determine if this species is present. A biologist familiar with tadpole shrimp visited the site and stated that the chances of finding tadpole shrimp on site are unlikely. Should an impact to endangered species be identified, the Corps will initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service as required by Section 7 of the Endangered Species Act.

Habitat for Fish, Other Aquatic Organisms, and Wildlife - In the short-term, wetland habitat loss will cause a minor negative effect upon aquatic organisms. However, the preserved and mitigation wetlands will provide a minor long-term benefit. As stated above in the Wetlands section, these wetlands will provide a larger contiguous wetland habitat with a more continuous tidal flow from the flood control channel, leading to high invertebrate and bird numbers.

b. IMPACTS ON RESOURCES OUTSIDE THE AQUATIC ECOSYSTEM

(1) Physical Characteristics and Anticipated Changes

Air Quality - Project activity would have minor, short-term impacts on air quality in the vicinity of the project site. Based on the relatively minor size of the proposed project, limited to an evaluation of air quality impacts only within Corps of Engineers' (Corps) jurisdictional areas, the Corps has determined that the total direct and non-direct project emissions would not exceed the de minimis threshold levels of 40 CFR 93.153. Therefore, the proposed project would conform to the State Air Quality Implementation Plan (SIP) for California.

Noise Conditions - Construction activity would have minor, short term impacts on the ambient noise levels in the project site vicinity.

(2) Socioeconomic Characteristics and Anticipated Changes

Economics - The project is expected to have a long-term beneficial impact to the local and regional economy. The office complex will create revenue for the community. The construction of this complex conforms to the City of Fremont's General Plan for the economical development of the area.

Employment – The project is expected to have both short and long term minor beneficial impacts to employment, by hiring people to construct and maintain the project, as well as indirectly by creating facilities for businesses and their employees to work.

(4) Historic - Cultural Characteristics and Anticipated Changes

The applicant requested historical and cultural information from the California Archaeological Survey Northwest Information Center at Sonoma State University in August 1997 and received a response on September 1997. A review of their existing records and literature found that 100 percent of the project area has been studied for cultural resources with negative results (ARM 1989). Consequently, there is a low potential for Native American sites in the project area, and further archival and field study by an archaeologist is not recommended.

The Office of State Historic Preservation in Sacramento was sent a copy of these results, to determine if they concur with the information provided by the Northwest Information Center and if they had any different recommendations. A response was received on February 9, 1998 stating that they could not make comments in a timely manner, but that if cultural resources are found during construction, work in the area will stop and a qualified professional archaeologist will be contacted.

c. SUMMARY OF INDIRECT IMPACTS

None have been identified.

d. SUMMARY OF CUMULATIVE IMPACTS

This project is located in a developed area of Fremont, which currently contains facilities for heavy manufacturing, chip manufacturing, restaurants and sewage treatment plants. Currently, permits are

pending for development of the property directly to the north and south of the proposed project site.

e. CONCLUSIONS AND RECOMMENDATIONS

Based on an analysis of the above identified impacts, a preliminary determination has been made that it will not be necessary to prepare an Environmental Impact Statement (EIS) for the subject permit application. The Environmental Assessment for the proposed action has, however, not yet been finalized and this preliminary determination may be reconsidered if additional information is developed.

5. Alternatives Analysis: Evaluation of this activity's impacts will include application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. 1344(b)). An evaluation pursuant to 404(b)(1) Guidelines indicates that the project is not water dependent.

To address 404(b)(1) Guidelines requirements, the applicant has considered three alternatives, which are summarized below:

No Fill. If no wetlands are filled on the project site, development would be economically unfeasible, and therefore, the site would remain vacant. The wetlands on site could then become more degraded as the surrounding area becomes more industrialized.

Maximum Development. All 7.66 acres of wetlands on the site would be filled. Mitigation would take place at an unspecified off-site location. The site would be developed with four single story buildings, three two story buildings and a parking lot. Clustering of impacts would not occur and no public open space would be provided.

Proposed Development. Approximately 75% of the site would be developed, with 2.36 acres of wetlands filled. Three single story buildings, three two story buildings and a parking lot will be constructed in the

filled area. The remaining 5.3 acres of wetlands in the southwest corner of the property would remain in its current state. Mitigation would take place in the southwest quarter of the property and connect with the wetlands in this area that were not filled.

No alternatives were discussed, which would avoid or minimize impacts in Corps jurisdiction at a level between No Project and the Proposed Project on-site. Off-site alternatives were not discussed by the applicant.

6. Public Interest Evaluation: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts the proposed activity may have on the public interest requires a careful weighing of all those factors, which become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All factors and their cumulative impacts must be considered, relevant to the proposal. These factors include conservation; economics; aesthetics; general environmental concerns; wetlands; cultural values; fish and wildlife values; flood hazards; floodplain values; land use; navigation; shore erosion and accretion; recreation; water supply and conservation; water quality; energy needs; safety; food and fiber production; mineral needs; considerations of property ownership and, in general, the needs and welfare of the people.

7. Consideration of Comments: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to

consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

8. Submission of Comments: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name, the number and the date of this Notice and should be forwarded so as to reach this office within the comment period specified on page one of this Notice. Comments should be sent to: Lieutenant Colonel Richard G. Thompson, District Engineer, Attention: Regulatory Branch. It is Corps policy to forward any such comments, which include objections, to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose address is indicated in the first paragraph of this Notice, or by contacting Philip Shannin of our office at telephone (415) 977-8445. Details on any changes of a minor nature made in the final permit action will be provided on request.



SHEET: DATE: November 1997

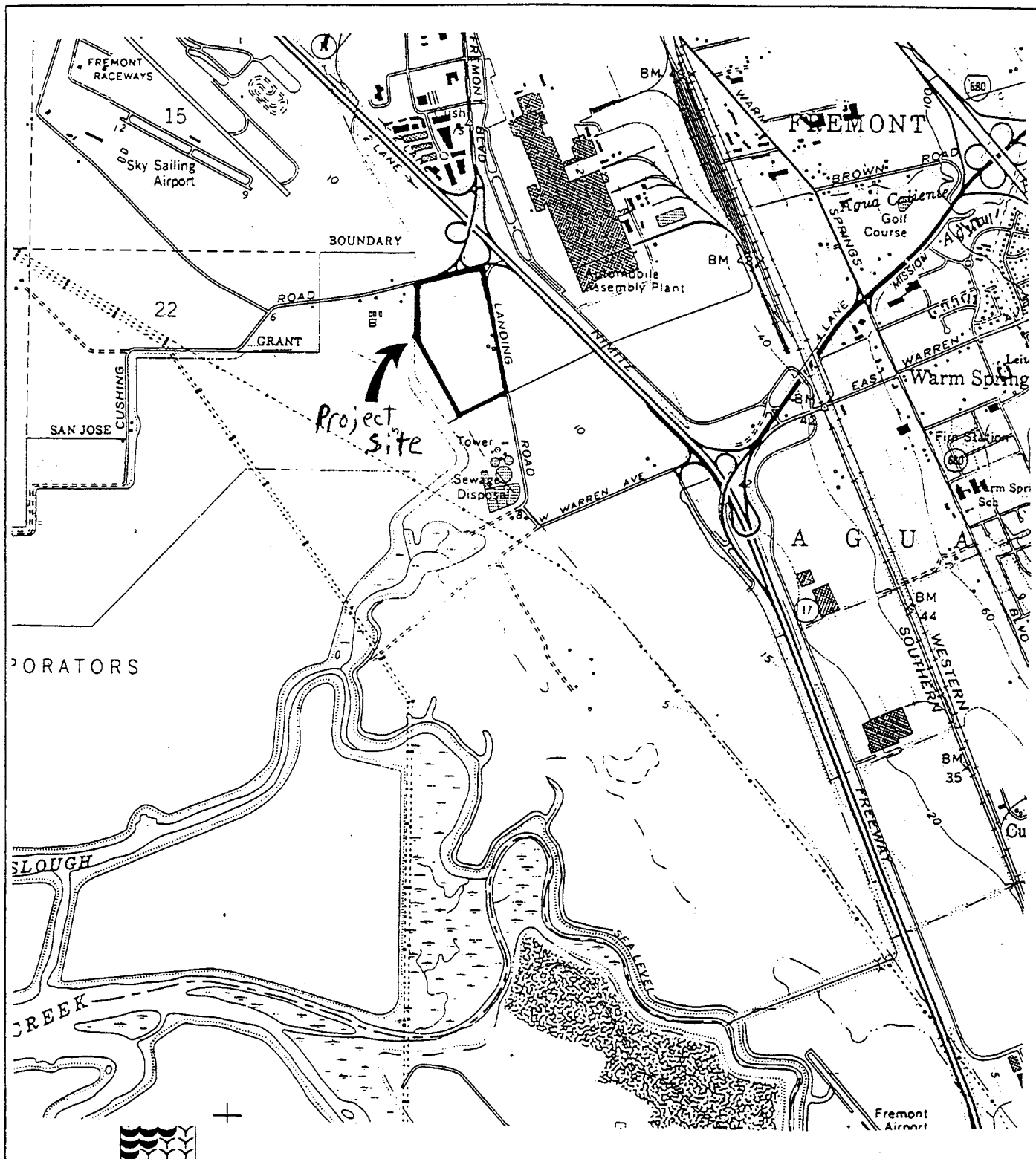


Figure 1-2

Wetlands Research Associates, Inc.

PURPOSE: Office Building Construction

Datum: Mean Sea Level

USGS Quadrangle: Milpitas, 1980,
7.5 minute series

ADJACENT PROPERTY OWNERS:

See Application

SITE MAP

1000 0 1000 2000 feet

SCALE 1:2000 feet

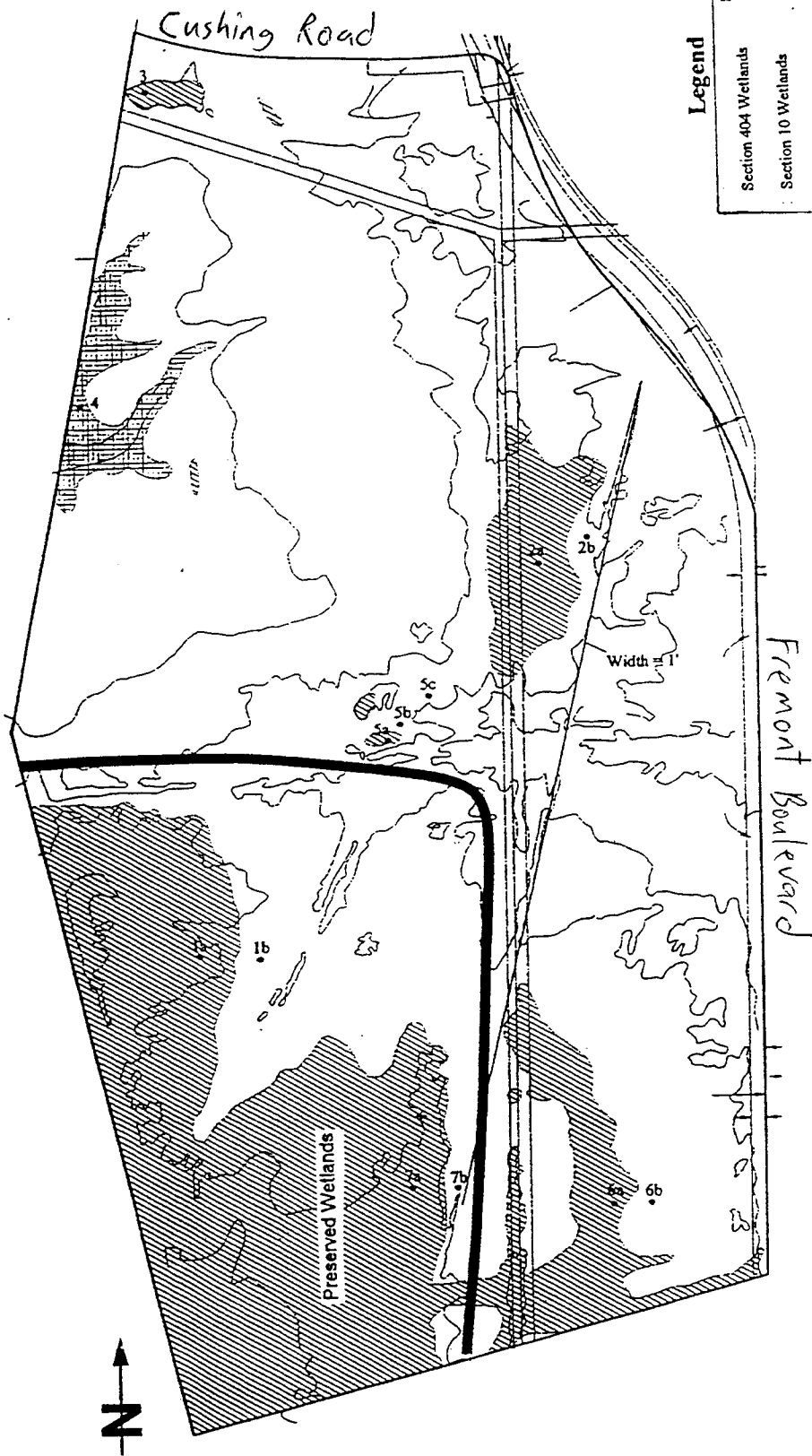
Baccarat Fremont Developers LLC
10050 Bandley Drive
Cupertino, California 95014-2188
Phone: 408-725-0700

LOCATION: Corner of Cushing Road and
Fremont Boulevard

COUNTY: Alameda

APPLICATION BY: Baccarat Fremont
Developers LLC

SHEET: DATE: November 1997



Legend

- Section 404 Wetlands
- Section 10 Wetlands
- Study Area Boundary
- Sampling Point

Figure 2



Wetlands Research Associates, Inc.

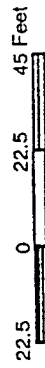
PURPOSE: Office Building Construction

DATUM: NGVD

ADJACENT PROPERTY OWNERS:

See Application

Delineated Wetlands Map



SCALE 1: 540

Baccarat Fremont Developers LLC
10050 Bandy Drive
Cupertino, California 95014-2188
Phone: 408-725-0700

LOCATION: Corner of Cushing Parkway and Fremont Boulevard

COUNTY: Alameda

APPLICATION BY: Baccarat Fremont Developers LLC

SHEET: DATE: April 1998

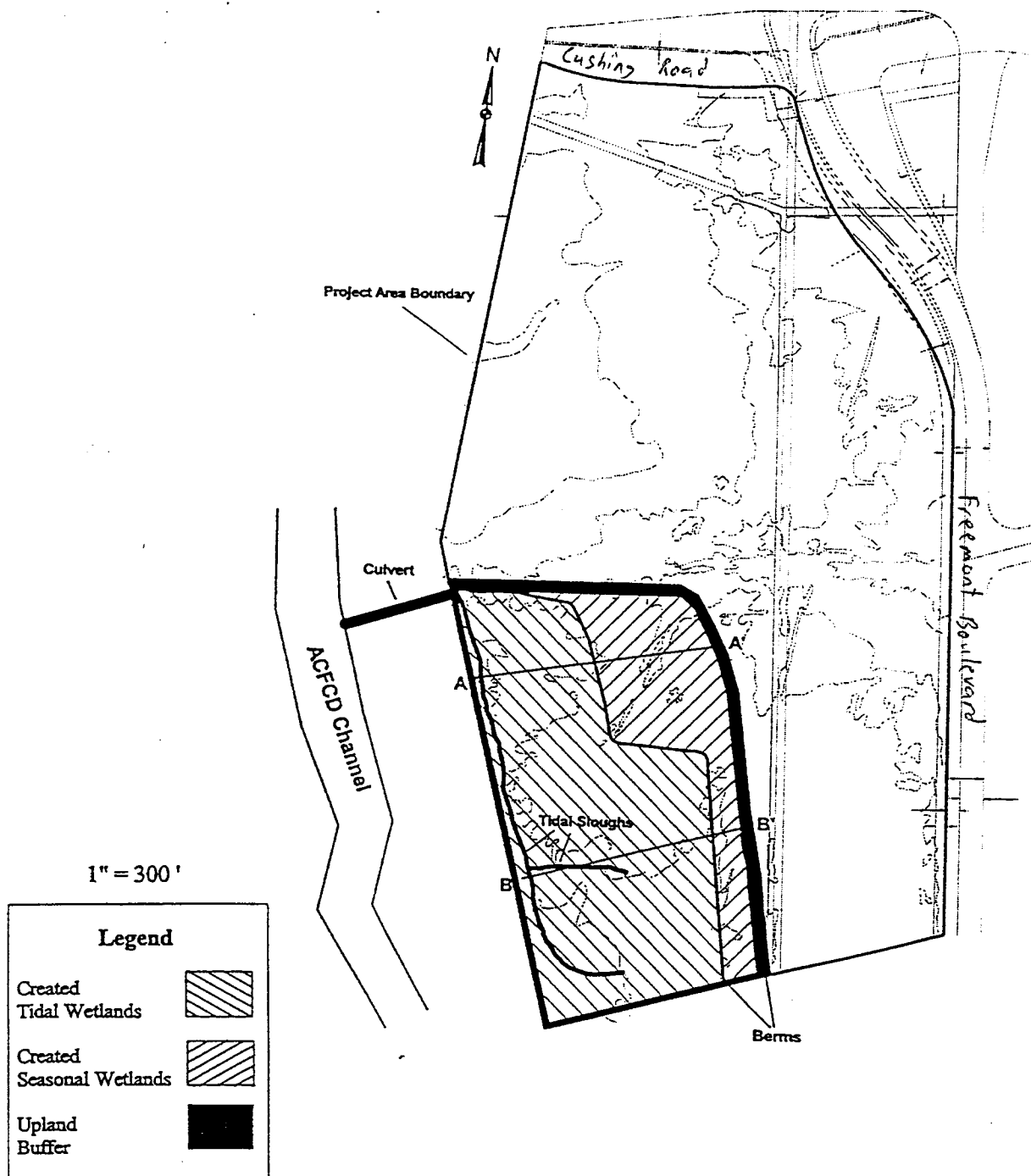


Figure 3

Wetlands Research Associates, Inc.

PURPOSE: Office Building Construction

DATUM: NGVD

ADJACENT PROPERTY OWNERS:

See Application

MITIGATION SITE PLAN VIEW
 150 0 150 300 FEET
 SCALE 1" = 300 Feet

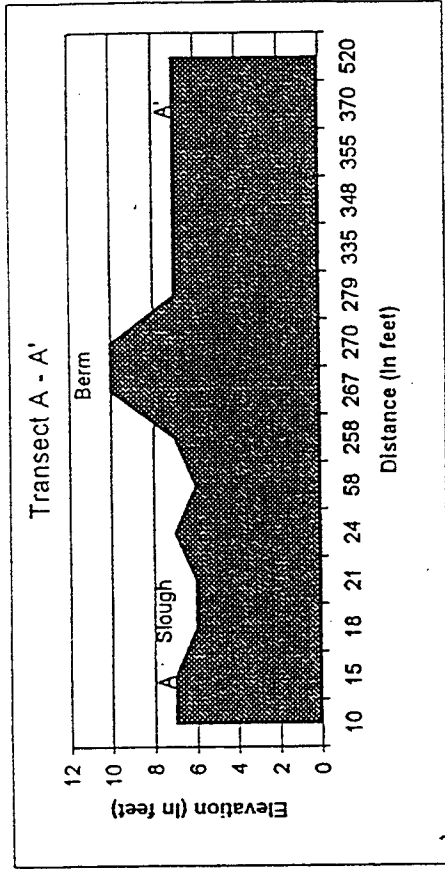
Baccarat Fremont Developers LLC
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LOCATION: Corner of Cushing Parkway
 and Fremont Boulevard

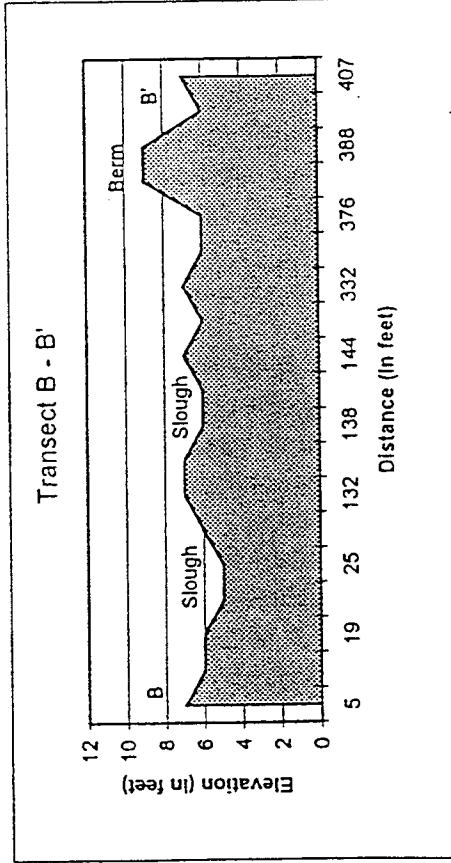
COUNTY: Alameda

APPLICATION BY: Baccarat Fremont
 Developers LLC

SHEET: DATE: April 1998



Refer to Figure 3 for location of transects.



Wetlands Research Associates, Inc.

PURPOSE: Office Building Construction

DATUM: NGVD

ADJACENT PROPERTY OWNERS:

See Application

CROSS SECTION OF MITIGATED WETLAND

Baccarat Fremont Developers LLC
10050 Bandy Drive
Cupertino, California 95014-2188
Phone: 408-725-0700

LOCATION: Corner of Cushing Parkway and Fremont Boulevard
COUNTY: Alameda
APPLICATION BY: Baccarat Fremont Developers LLC
SHEET: DATE: April 1998

Figure 4